

Testimony of the Intertribal Agriculture Council  
Before the U. S. Senate  
Committee on Indian Affairs  
S. 1586 'Indian Land Consolidation Act Amendments of 1999'

Mr. Chairman, I am Ross Racine; Director of Programs for the Intertribal Agriculture Council located in Billings, Montana. I am an enrolled member of the Blackfeet Tribe; Browning, Montana and one of eleven expected heirs to my parents trust land. The address of fractionated heirship land is about to effect me personally as my father is 72 years old.

This testimony is submitted by the Intertribal Agriculture Council, an organization of dues paying member Tribes who together control over 80 percent of the 56 million acres held in trust by the United States for Indian people. Founded by 84 Tribes in 1987 to promote improvement in Native American and Alaskan Native agriculture. The IAC is governed by a Board of Directors elected by the Tribes from each of the twelve regions of Indian Country reflecting the diverse character of Indian Agriculture. Our main purpose in the IAC is to promote the Indian use of Indian resources for the betterment of Indian people.

On behalf of the Tribes we serve, we appreciate the opportunity to provide testimony on S. 1586 "Indian Land Consolidation Act Amendments of 1999." We have to commend those who attempt to create solutions to the problem of fractionated interest land ownership. However, true and workable solutions must come from those closest to the problem, the Indian Land Owners and their respective Tribal Governments.

The BIA has been engaged, before and since the enactment of the Indian Land Consolidation Act of 1983, in attempting to develop plans to address the problem of fractionated title to Indian trust allotments or, in Oklahoma, restricted fee patents. The problem was recognized as early as 1910 when Congress enacted a statute to authorize Indians to write wills to control the devise of their trust allotments, provide for the descent of such trust properties in the event of intestacy, and provide for probate of trust estates.

The problem was discussed in the Meriam Report commissioned in 1928; was minimally addressed in the Indian Reorganization Act of 1934; and was not again addressed until the 97th Congress in 1983 with enactment of the Indian Land Consolidation Act. Significant amendments were adopted in the 98th Congress following extensive hearings by the Senate Select Committee on Indian Affairs.

The Indian Land Consolidation Act was a major step forward in recognizing the rights of

Tribes to adopt codes of law to regulate inheritable interests in Indian owned land within reservations, authorizing establishment of land consolidation plans with concomitant authority to sell or trade tribal lands for land consolidation purposes, establishing certain rights of Tribes to purchase fractional interests in trust or restricted lands to consolidate titles, and extending certain provisions of the Indian Reorganization Act to Tribes not covered by that Act.

To prevent devise or descent of minimal fractional interests in trust or restricted lands believed to be of little or no monetary value, ILCA provided for escheat to a Tribe of any fractional interest in a parcel of land that constituted less than 2 percent of the title interest in the land unless it could be shown that such property interest was capable of generating income. Tribes were authorized to override or supersede this escheat provision through adoption of their own code and many did. The only restriction being that fractionation below the 2 percent interest would not be allowed.

The IAC Board of Directors, on advice of counsel and legislative contacts, has voted to support the BIA effort to have hearings and introduce legislation on Fractionated Heirship because the Congress and administration are agreeable to dealing with this issue and recommending funding - a situation which has not existed in the recent past.

The problem of fractionated heirship land has been compounded since the passage of the Indian Land Consolidation Act by the failure of the Bureau of Indian Affairs to fully implement regulations for that Act. The failure to develop regulations and procedures has prevented any tribally prepared land consolidation plans from being approved since passage of the ILCA. Any authorization or development of programs enabling the Federal Government to purchase property within the exterior boundaries of Indian Reservations must be put on immediate hold until the Department of Interior develops the necessary regulations for the ILCA and PL. 103-177 "Indian Agricultural Resources Management Act of 1993."

The "Indian Agricultural Resources Management Act" is included here because within that law is the provision recognizing Tribal Government authority in the development and passage of law defining what determines "majority interest" and taking action to directly address fractionated interests. This law specifically identifies Tribal Government authority in determination of land use, resource management planning, preference in leasing, and determining fair market value in leasing and permitting. Regulations and implementation of PL. 103-177 must take place prior to passage of another law which may conflict with established law.

Ownership of lands within established reservations should be a right reserved to Tribal Governments, any Indian owner of property, or any descendent of an Indian landowner within the confines of the respective reservation. To authorize the purchase of land by the Department of Interior diminishes the right of Tribes, Indian landowners or their descendants and puts Tribes and Indians in unfair competition with the Federal Government. Direct federal ownership also raises conflicting issues with Tribal

Government authorities where federally-owned land falls under Tribal jurisdiction. The opportunity for first right of ownership must be the priority consideration of any legislation addressing consolidation.

Bureau of Indian Affairs Credit programs, as well as USDA Indian Land Consolidation lending programs were never funded to the authorized limits, which severely limited the ability of Tribes and Indian landowners to utilize these programs for their intended purposes. Most attempts at borrowing, by owners of small fractions of heirship lands, were discouraged or turned down because the loans did not cash flow. Individual landowners are not eligible for the USDA Indian Land Consolidation loans only Tribal Governments. This program has only been funded at 1.5 million for the last 3 years, an amount one Tribe could totally obligate in less than one year. Prior to the allowance of the Department of Interior to purchase Indian land, programs must be put in place which encourage and enable the rightful owners to consolidate interests. Such programs include lending programs available to individual Indians and their respective Tribes. True consolidation through purchase will only take place when the income from the purchased interest is coupled with other income and applied to a principal in a specified time frame. The proposed purchase plan will require the purchase of about 8 million acres of land by the Federal Government, which will never in real time be returned to the rightful owner. At present appropriation levels for the present plan, it would require at least 200 years to accomplish.

The proposed “SEC. 206. DESCENDENT AND DISTRIBUTION OF TRUST OR RESTRICTED LANDS; TRIBAL ORDINANCE BARRING NONMEMBERS OF AN INDIAN TRIBE FROM INHERITANCE BY DEVISE OR DESCENT” is in direct violation to constitutionally guaranteed right to ownership and the only government that should be addressing right to inheritance is Tribal Government.

Any proposed corrective action to the problem of fractionated heirship land should provide all opportunities given to any other landowner of this country. One such opportunity is the formation of a holding company, corporation, partnership or other instrument for the purpose of combining and holding trust property interest in a single ownership name. The “Holding Company” would be recognized as a single owner, the tracts treated as single owner tracts and distribution of income would be made to the “Holding Company.” Individuals owning interest included in the “Holding Company” would elect representatives to have authority to enter into leases, rights of ways etc. on behalf of the “Company” members. Recognition and authorization of such companies would create more one owner tracts than any purchase program and would not require the incurrence of debt.

“Section 218. TRUST AND RESTRICTED LAND TRANSACTIONS” is a positive step in the encouragement of individual interest owners to consolidate their interests and will facilitate the administration of such actions in a short time frame. Today the process of “gift deed” takes on the average three years. Owners often get frustrated and give up on the process prior to completion because of the time involved. This section will remove the

current time necessary to complete such transactions and assure completion.

In 1995, a draft bill and supporting language was developed by a informal, unaligned working group (Representatives from Umatilla, Fort Belknap, Navajo, Oglala, Turtle Mountain, Fort Hall, Coeur D'Alene, Crow, Red Lake, Salish & Kootenai, and Rosebud) to develop specific alternatives which would allow the Tribes to choose between several statutory mechanisms to address fractionated heirship issues in a manner which protects landowner rights and meets the cultural concerns of the local community. The bill developed by this unaligned group address the shortfalls of S. 1586 while providing no-cost opportunities to the present owners of the land and allows the purchase of Indian land by the Federal Government only after a Tribe fails to take corrective actions within a 5 year time frame.

Our approach is to offer significant amendments to the proposed legislation to bring it into conformity with the views and desires of Indian Country. It is possible that some Tribes would accept the proposal for direct BIA purchase and ownership of heirship lands, but other options should be available to Tribes and landowners which more specifically meet the needs of the individual communities and address the constraints we identified earlier. It is therefore necessary for Indian Country to come-up with a series of potential solutions from which individual Tribes and communities can pick authorized actions to meet their needs.

Many potential solutions have been discussed and concept papers prepared by various working groups. In addition, specific tribal governments have also formally developed and proposed their own solutions to the problems of fractionated heirship. Any legislative proposal must embrace, or at least authorize, these solutions proposed and developed from within Indian Country.

Following is the overview and legislative proposal of the unaligned working group:

### Introduction

The problem of fractionated heirship is simple:  
There is no landowner with ownership rights.

The Federal Government maintains the responsibility as trustee on Indian lands and has evolved a method of recording and maintaining ownership on Indian lands. In attempting to preserve ownership rights, the actions of the federal government on Indian lands which have passed to various heirs has resulted in a land with a unique and untenable ownership. This unique ownership, referred to variously as Fractionated Heirship or Undivided Interest, is a failed attempt to maintain private ownership of land without taking action to

specify which tracts are being inherited. The result is a large number of individuals who have some undefined ownership rights in a specific tract of land, which they share in unequal portions with other individuals. Unlike the expected situation, these various individuals who share ownership are not legally associated in any manner, which allows associational decision making for the benefit of the whole. By federal action, these individual owners of undivided interests must remain separate, with individual ownership rights and authorities.

There is no counterpart in this or any past civilization available to use as a model for administering or utilizing this unique form of ownership. If inherited land had been partitioned into subdivided tracts these problems would not have occurred. If the owners were in some manner an association, so that a method of decision making was implemented, a democratic system could be put in place and the problems faced by Indian landowners today would not occur. If the land was held communally by all heirs, a system for administering the land would become readily available based on Asian or Oriental precedents, and again today's disenfranchised owner would not exist. If the land had remained in Tribal ownership, no problems faced today would have materialized. Finally, if the federal government had deferred to an established tribal decision-making process for the inheritance of property, the situation would have resolved itself in traditional tribal channels.

Unfortunately, none of the established methods of dealing with real property was applied in the case of Indian allotted lands. Instead, the federal government, in attempting to exert its responsibility as trustee, implemented the heretofore-unknown process of passing land tracts, in undivided form, to heirs and descendants as fractionated interests in the whole. When the original allottee of a 160-acre tract of Indian land passed away, each of his or her heirs inherited an equal, yet undivided share of the 160 acres. If there were four heirs each would own a share proportional to 40 acres, but no method has ever been implemented to determine which 40 acres is owned by whom. As generations continue to be replaced, the fractionation of the ownership progresses exponentially.

### The Problem Defined

The problems resulting from Fractionated Heirship (AKA Undivided Interest) can only be successfully addressed if care is taken to separate real problems from those which may occur but are peripheral to the issue, and to separate the causes of heirship fractionation from the effects of fractionation. This section focuses on the problems from an Indian viewpoint, rather than a federal or administrative viewpoint, because the BIA has its own working group focusing on internal problems.

Problems resulting from attempts to administer the lands, such as a failed title plant, are not specifically a result of fractionated heirship, nor do they contribute to fractionated heirship - these are factors which are affected by, but are neither the direct cause nor a direct result of fractionated heirship.

## Causes

The causes of the fractionated heirship of millions of acres of Indian-owned lands can be summarized under three interrelated factors:

1. Imposition of non-traditional values on the American Indian culture: The primary cause of this problem is the policy of the federal government, as spelled out in the Dawes Act and reiterated in various allotment acts, to divide communally held ancestral lands into small tracts owned by individuals, who had no cultural history, experience or tradition of private ownership of real property. The private ownership of real property, taken for granted in the United States is not a globally held concept. Private ownership of real property originates, in part, in the English Common Law and is uniformly missing from other cultures, including the aboriginal American cultures. At the time of allotment, the tribal leaders and individual allottees had no basis for understanding or addressing these land allotments, and the wholesale loss of lands to the Indian community, the fractionation and therefore devaluation of the remaining assets, and the alienation of individuals from their traditional ties to the land was to be anticipated.

2. Failure of the American Indian culture to adapt: The second causative agent of the fractionated heirship status of Indian allotted lands is tied to the first, but reflects the decisions and culture of the Indian community, not the federal government. This contributor to the problem is the lack of provisions on the part of the landowner for the distribution of their assets after their demise. The lack of a tradition of private ownership resulted in a lack of formal wills or other conveyance documents, which would have prevented the current situation. This situation may not have become a problem if left to traditional tribal remedies, because the established tribal decision making process would have re-allocated the holdings. However, the allotments were made under federal provisions, and therefore the distribution of a decedent's assets were also based on the English Common Law, not the local law or tribal cultures understood by the affected individuals.

3. Failure to implement available solutions: The third causative agent, is the failure to take those actions available under existing laws to curtail this long recognized and increasing problem. Written positions by early BIA officials stated the existing problems, predicted the upcoming crisis and recommended action. Most eloquent among these was the 1936 report of Commissioner Collier. However, no meaningful action has been taken to actually reduce this problem using available authorities. Procedures, which are available to address this issue administratively, include:

- Counseling Indian landowners to prepare wills,
- Negotiating or forcing land partitionments of fractionated tracts,
- Developing a federal probate code,
- Utilizing authorities for land acquisition and sales among surviving heirs,
- Promoting land exchanges to consolidate holdings,
- Promoting gift deeds to simplify probates in the case of elderly landowners,
- Developing the regulations necessary to implement laws of escheatment,

- Recognition of mandated land consolidation plans.

The BIA has authority to undertake the above actions, but no effort is ongoing to deal with this problem, so no forward progress is made.

### Effects

A second attribute of this problem, and perhaps the most important of the two in developing equitable solutions, is the effects on the Indian lands, communities and owners caused by the heirship status. For any solution to be effective it must mitigate the primary effects of the problem. The effects identified by this working group can be generally lumped into five separate headings: Ownership Effects, Economic Effects, Tribal Homeland Effects, Development Effects, and Administrative Effects. These are overlapping in many areas but are discussed separately for clarity.

1. Ownership Effects: The effects of the fractionated heirship status of Indian allotted lands is most keenly felt by the individuals who actually own shares in this land, usually referred to as allotted land owners. Owners of fractionated lands retain little or none of the benefits of ownership usually attributed to landowners in this society. A fractionated owner cannot clearly identify or locate their holdings; cannot make beneficial use of it without the direct involvement of the other owners and the federal government; have no actual equity position in the land for borrowing or net worth purposes; cannot directly access the USDA farm programs on their own behalf; have virtually no direct involvement or authority in its management or use, except as granted by the federal government on an individual basis; and as stated almost 60 years ago, are reduced to the status of a destitute absentee landlord with minimal returns. Perhaps worst of all, the mismanagement of this one remaining valuable asset of the Indian Nations is the one place American society where the phrase “majority rules” does not apply, and the owners have become embittered and antagonistic toward the federal trustee who is responsible for the control of “their” lands.

2. Economic Effects: Economic benefits to the landowners and to the community at large are minimal. Landowners receive small lease payments, proportional to their ownership share, which are paid by the lessee to the Bureau of Indian Affairs and redistributed through Treasury to the individual landowners. Because the lease income is divided among many separate owners, even lease rates well over appraised value result in little meaningful income to the owners. These Treasury checks, while small, are also the primary reason people in nearby communities mistakenly believe that Indian people are subsidized in some unique fashion by the federal government. The ownership shares are also worthless as collateral for loans or mortgages.

The value of products produced from the land accrue to the lessee, frequently a non-resident of the reservation, and those funds are not available to build the reservation economic base. In short, the leasing of these millions of acres of fractionated lands makes little or no contribution to the economy of the local community. In off-reservation rural

areas, income from the land has been the basis for developing thriving communities based on service, merchandising, and managing the land based assets. In Indian Country, the land has produced none of these generally accepted contributions to the community, has not provided the foundation for community development, and generally is not contributing to the development of meaningful reservation economies.

In addition to the absence of a contribution to reservation economies, this problem diverts funds and resources from other, critical needs. The increasingly complex administration of Fractionated Heirship lands divert limited resources from the positive contribution of land management and economic and social development to custodial monitoring of a continually worsening situation.

Other adverse economic impacts of fractionated heirship lands come from the billing and collection process utilized by the Bureau of Indian Affairs on fractionated lands under irrigation projects. If a heirship tract of land is not leased, the BIA bills each heirship interest owner the full amount of the total owed for irrigation operation and maintenance for the total tract. If the operation and maintenance charges are not paid in full on an annual basis, they become a debt against the property which accrues on an annual basis. This process diminishes the value of the property and further reduces owner income.

3. Tribal Homelands Effects: A large proportion of the remaining Indian reservations and restricted Indian lands in Oklahoma, were established by treaty, proclamation and law to provide a homeland, in perpetuity, for Native Americans in return for certain concessions of land, mobility and resources. These homelands were then divided by the trustee and granted to individuals, with the remainder opened for homesteaders in many areas. Those lands not homesteaded or retained communally by the Tribe have become fractionated to the degree that they contribute no benefit to the tribal homeland, and in fact are less a homeland than a lessee-hold interest, held by non-Indians and administered by the federal government. The ideals of a homeland wherein the Tribes continue to reign in their traditional role is completely undercut when the Tribe and its members can only react to federal non-management of their dwindling assets because there are no true owners, and they cannot make direct or beneficial use of their assets.

An additional effect is the impact on the relationship between an individual and their ancestral roots with the Tribe. In some instances, landowners living away from the reservation may consider their land holdings, inherited from their ancestors, as their major family, emotional and cultural tie to their Tribe. The fact that their holdings are small, fractionated and unidentifiable does not diminish this tie with their roots, and complicates efforts at solving this problem by taking or escheating small interests.

4. Development Effects: Under existing administration, which is generally limited to open market leasing of surface and sub-surface estates, fractionated lands are not and cannot be developed to their potential. Most remain in an undeveloped, grazing state, which generates the least possible return to the landowners, and does nothing to improve the equity in the land. There is a strong economic dis-incentive for lessees to develop these



lands because they cannot retain ownership of the improvements and the lease cost will increase in subsequent years under the current management. Best case economic management for a lessee is to conduct the absolute minimum maintenance required by the terms of the lease, in order to avoid attracting competition during the next open market bidding process.

Community development is also severely curtailed due to the large quantity of land which is maintained in marginal development and condition. Rather than fueling an expanding economy based on retail sales and service delivery, these marginally productive lands accrue income to off-reservation sources and the income available within the reservation community is artificially low. Land development is a primary source of initial income in developing economies, and Indian reservations have yet to go through this preliminary phase of economic development common to all developed economies in the world today.

5. Administrative Effects: Land titles and records are generally maintained at the county level in American communities, however when Indian lands are recorded the entire process is safeguarded within the BIA. There can be no other single organ of government, which maintains the quantity, and type of individual land ownership records maintained by the Bureau. Despite this experience, which should be expected to confer some level of expertise, the Bureau Titles and Records division is the brunt of continuous and expanding criticism from landowners, Tribes, and branches of the BIA itself. It is not possible to develop a data maintenance system, which is completely error-free, especially if human input, is involved. However, due to the vast quantity and financial nature of the records maintained, even a tiny standard error results in tens of thousands of record errors in a single year. The problem here is not institutional incompetence, rather it is the inability of any governmental or private sector entity to effectively carry out such overwhelming and diverse responsibilities.

Administrative problems are not limited to this single branch. Lease payments from all sources, including surface, agricultural, commercial, mineral and oil and gas are distributed to the individual landowners based on their individual shares as currently recorded in the titles section. With the undivided nature of the ownership, this requires that hundreds of individual federal checks are written each year for each allotment, many well below the actual administrative cost to the government of writing the check. Perhaps even more damaging to efforts at improving governmental efficiency is the requirement that each of the undivided interest landowners be involved, in some manner, with the leasing or permitting of their land, no matter how small their share. Rather than using the leasing or mineral program to advance reservation development, the staff is occupied processing mass mailings of form letters to thousands of individuals. Few of these form letters are actually understood by the landowners, and fewer still are signed and returned.

Land and resource management functions within the BIA, and in some cases the Tribe, are similarly tied into ineffective and self-serving communication with absentee and disinterested landowners rather than resource development and management to achieve local goals for economic development. Disenfranchised landowners, receiving contact

from the agency on land issues, are generally just reminded of their own ineffectiveness in exercising any control over the lands they own.

### Constraints

Having listed the above items as important effects of the Fractionated Heirship status of Indian lands, it is necessary that any proposed solutions actually work to reduce those identified problem areas. In addition, the working group has described seven constraints which they feel must be addressed in any proposed solution. These are:

1. Recognition and provision for the cultural and emotional ties that Indian landowners may have to their inherited lands, no matter how small.
2. Equalities of economics, not just the short-term income derived, but also the long-term equity value of the landowners, as well as the required investments, if any.
3. The reservation (and former reservations in Oklahoma) as the ancestral homeland for the members of the Tribe, in perpetuity.
4. The rights of landowners to will their lands to whomever they please, whether a tribal member at that reservation or not, and the rights of individuals to inherit lands without regard for their enrollment status.
5. Any solution must reflect the individual cultures and governments of the individual Tribes, address their individual methods of problem resolution, and advance or maintain tribal sovereignty.
6. Solutions should acknowledge and embrace tribal efforts at solving this problem, including the development and implementation of tribal inheritance codes.
- 7 Finally, and foremost, any solution must protect the constitutionally guaranteed rights of landowners and specially provide methods for landowners to utilize their own lands on their own behalf.

## A BILL

To preserve original Indian homelands, reduce fractionated ownership of Indian allotted lands, protect property rights of individual Indian land owners and for other purposes -

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### Section 1. Short Title:

This act may be referred to as "The Indian Land Preservation and Consolidation Act of 1999."

### Section 2. Findings.

The Congress finds and declares that -

(1) The United States and Indian Tribes have a government to government relationship;

(2) There exists an undisputed general trust relationship between the United States and the Tribes through which the United States has a trust responsibility to protect, conserve, and provide for the utilization and management of Indian lands, consistent with its fiduciary obligation and its unique relationship with Indian tribes:

(3) In the last century and the early part of this century, the United States sought to assimilate Indian people into the "mainstream" by allotting tribal lands to individual tribal members, to eliminate large tribal landholdings by treaties, allotment acts and making tribal land available for homesteading, surplus sales, and other uses not consistent with its fiduciary obligation to Indian people and its unique relationship with Indian tribes;

(4) During this period and continuing today allotments were removed from trust by forced fee patent, sale by both the Indian landowners and the federal government, probates under state inheritance codes, foreclosures, and Tribal treaty lands declared "surplus" and sold by the federal government, resulting in over 90 million acres of Indian homelands passing out of Indian hands during the allotment period;

(5) Federal policy has created an ownership of allotted lands whereby allotted

estates are divided on paper, and continued in federal trust without the benefit of physical partitionment or division so that Fractionation of Indian land ownership has occurred and continues at an accelerating rate;

(6) These archaic federal Indian-land policies have hindered the current policy of self-determination and government to government relationships, and despite the passage and amendment of the Indian Land Consolidation Act the number of fractional interest continues to grow; Indian homelands continue to shrink and the increased growth of unpartitioned interests in trust allotments makes it unfeasible for most heirs to make practical use of the land themselves;

### Section 3. Purposes.

The purposes of this Act are to -

(1) Fulfill the trust relationship of the United States to Tribes and individual Indians and to promote self-determination by providing for the resolution of Fractionated Heirship and other land issues in a manner consistent with Tribal goals and priorities.

(2) Protect the remaining Indian homelands and curtail the passage of land out of Indian ownership and Tribal jurisdiction.

(3) Authorize and require the Secretary to take part in resolving the consolidation of Indian Land ownership, in a manner consistent with Tribal goals and priorities.

(4) Recognize the authority of the Tribal Governments to seek and implement innovative solutions which reflect local needs and cultures.

(5) Provide for the beneficial use of Indian lands by the Indian people who own those lands.

### Section 4. Definitions:

(1) "Indian" means any individual who is recognized as a member by a North American tribe, band, nation, pueblo or other organized group of native people who are indigenous to the Continental United States.

(2) "Indian Landowner Holding Company" means an organization of landowners who have formed a real property holding company which may take the form of a corporation, partnership or other instrument recognized by the Tribal Government for the purpose of combining and holding trust real property interests in a single ownership name.

(3) "Land Consolidation Plan" means a plan developed through a documented community based planning process and enacted by the tribal government, defining land

consolidation goals and a means of reducing fractionation through gift deed, sale, purchase, and exchange among owners and/or other Indians or tribes.

(4) "Secretary" means the Secretary of the Interior;

(5) "Tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized eligible for the special programs and services provided by the United States to Indians because of their unique status as "Indians";

(6) "Tribal Government" means the body that governs the tribe, by custom, tradition, constitution or governing document;

(7) "Trust or Restricted Land" means a tract of land, all or a portion of the title to which, is owned by one or more individual Indians or a tribe and is held in trust for them by the United States or is owned by one or more individual Indians subject to federal restrictions on alienation.

## Title I - Land and Ownership Consolidation

### Section 101. Purpose.

The purpose of this section is to:

(1) Prevent the further fractionation of trust allotments;

(2) Consolidate fractionated interests and ownership of those interests into usable parcels;

(3) Vest title to such parcels in Indian people or the tribes;

(4) Promote Indian self-sufficiency and self-determination;

(5) To enhance the government-to-government relationship between the tribes and the United States.

### Section 102. Tribal Land Consolidation Plan.

Notwithstanding any other provision of law, any tribe, acting through its governing body, may adopt a land consolidation plan providing for the sale, purchase or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal land holdings; Provided, that -

(1) Except as provided in Section 103 part 3 and Section 401 part 3 of this Act, the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 percent of the fair market value;

(2) If the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) Any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land pursuant to the Tribal Land Consolidation Plan. Upon completion of the land consolidation project at the local level, any residual funds shall revert to the tribe.

(4) The Secretary shall maintain a separate trust account for each tribe and shall release such funds for the purpose of implementing Title 2, section 202 of this act.

#### Section 103. Indian Landowner Holding Companies.

In order to maintain ownership shares when desired by the landowners and still achieve the objective of reducing owners of record and administrative quagmires, owners of fractionated heirship interests in trust properties are authorized to form real property holding companies for the purposes of combining ownership shares into a single ownership for administrative purposes, while maintaining individual shares in the holdings of the Holding Company; Provided, that -

(1) Such holding companies may take the form of family trusts, corporations, partnerships or such other form as may be approved by the Tribal Government.

(2) The Holding Company shall elect from among its members, a president, chairman or other leader who shall represent the interests of the consortium to the Secretary, and who shall have authority to enter into and sign various land agreements, such as leases, rights of ways, etc. on behalf of the consortium members.

(3) The Secretary shall hold in trust title to lands or interest in lands held by such Holding Company, when the ownership shares are held by Indians eligible to have lands held in trust. For purposes of applicable law, the Secretary shall identify the Holding Company as a single owner, and the tracts shall be treated as single ownership lands. Distribution of income or other proceeds from the land will be made directly to the Holding Company.

(4) It shall be the responsibility of the Holding Company to maintain its internal shareholder records, redistribute land income to its shareholders, and in all other ways administer its own internal functions as a separate entity and landowner, in accordance

with section 103 paragraph ( 1).

(5) The Secretary is authorized to transfer title to fractional interests of individuals directly into holding Company ownership without the need for appraisal, gift deed, or other conveyance document on the specific written request of the landowners.

#### Section 104. Tribal Purchase Option.

When a tribe has adopted a Land Consolidation Plan, that tribe may purchase, at no less than the fair market value, part or all of the interests in any tract of trust or restricted land within that tribe's jurisdiction with the consent of the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 percent of the undivided interests in such tract; provided, that-

(1) Any Indian owning any undivided interest, and in actual and continuous use and possession of such tract for at least three years preceding the tribe's offer to purchase, may purchase such tract by matching the tribal offer;

(2) If, at any time following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary;

(3) The tribes shall be eligible for funding through the Acquisition Fund established in Title II of this Act for all Tribal purchases and exchanges initiated under this section

#### Section 105. Individual Co-owner Acquisition Program<sup>2</sup>.

When provided for in a Tribal Land Consolidation Plan, a current owner of interest in a fractionated heirship tract may purchase, at no less than the fair market value, part or all of the remaining interests in the tract of trust or restricted land with the consent of the owners of such interests, and when such purchase will act to reduce or eliminate the continuing fractionation of interests. Interests purchased under this part may before direct use of the purchaser or to consolidate holdings for trade or exchange with the Tribal Government or other Indian landowner; Provided, that -

(1) Any Indian owning any undivided interest, and desiring to purchase additional interests for purposes of trade or consolidation shall, as part of the purchase offer, submit an Estate Planning document to the proper local authority that prevents further fractionation;

(2) If, at any time following the date of acquisition of such land interest by an individual pursuant to this section, such interest is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall

have 180 days from the date it is notified of such offer or petition to acquire such interest by paying to the owner the fair market value as determined by the Secretary;

(3) Tribes may set-up a loan/grant program to assist Indian co-owners to consolidate holdings. This program would utilize funding from the Acquisition Fund established in Title II of this act to establish a matching loan/grant program with a maximum loan of \$10,000 per individual and a maximum matching grant of \$10,000.00 per individual to be used solely by co-owners to purchase the interests of other owners in their jointly owned tracts. Principal and interest payments made pursuant to this part will accrue to the Acquisition fund at that location.

#### Section 106. Individual Non-owner Acquisition Program 2

When provided for in a Tribal Land Consolidation Plan, an Indian who is not a co-owner in a tract may purchase, at no less than the fair market value, interests in the tract of trust or restricted land with the consent of the owners of such interests in order to eliminate the fractionation of interests. Lands purchased under this part may before direct use of the purchaser or to trade or exchange with the Tribal Governing Body or other Indian landowner in order to consolidate landholdings; Provided, that-

(1) Any Indian desiring to purchase lands under this act shall, as part of the purchase offer, submit an Estate Planning document that prevents further fractionation;

(2) If, at any time following the date of acquisition of such land by an individual pursuant to this section, such land is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such interest by paying to the owner the fair market value as determined by the Secretary;

(3) Tribes may set-up a Loan program to assist Indian people to acquire all the interests in fractionated tracts where they currently own no land interests, or desire to acquire land for the purposes of establishing a base of operations. This program would utilize funding from the Acquisition Fund established in Title II of this act with a maximum loan of \$10,000 per individual to purchase all the interests in fractionated tracts.

#### Section 107. Federal Acquisition Program.

Unless the Tribal Government has adopted and implemented a Land Consolidation Plan as defined in section 103 of this act and has implemented, as a part of that plan, all or part of the above elements, or other vehicles to directly reduce current fractionation of ownership and eliminate future fractionation of ownership, in a five year period from enactment of this act, the Secretary is authorized to acquire, in his discretion, and with the consent of its owner and at fair market value, any fractional interest in a trust allotment on that reservations or area of tribal jurisdiction.



(1) Administration of Acquired Fractional Interests.

(a) The Secretary shall receive the rents or other revenue from the fractional interests acquired pursuant to this Act. All such revenue shall be deposited in the Acquisition Fund created pursuant to Title II of this Act.

(b) The Secretary is authorized to include interests acquired pursuant to this Act in leases of the affected parcels including, but not limited to, business leases, timber sales and permits, grazing permits, agricultural leases, and mineral leases, and to grant easements and rights-of-way across said parcels. All revenue derived from such leases, permits and rights-of-way shall be deposited in the Acquisition Fund created pursuant to Title II of this Act.

(2) Consolidation of Acquired Fractional Interests.

(a) The Secretary may continue to acquire fractional interests in a trust allotment until either all of the interests have been acquired or the Secretary determines sufficient interests have been acquired to warrant partition of the trust allotment. The Secretary shall then cause the trust allotment to be partitioned, and full title to one or more of the partitioned parcels shall vest in the United States. Provided, that if the trust interests in the mineral estate have been severed from the trust interests in the surface estate, only the surface estate will be partitioned.

(b) The Secretary shall transfer the title of all full parcels acquired or partitioned pursuant to subsection (a) to the tribe on whose reservation the parcel is located or which has jurisdiction over the parcel.

(c) The Tribe receiving a parcel pursuant to subsection (b) may treat the parcel as any other tribally-owned parcel within the tribe's territory including, but not limited to leasing the parcel, selling the resources, granting of rights-of-way, or engaging in any other transaction affecting the parcel authorized by law. Provided, that until the purchase price paid by the Secretary for the parcel has been recovered, any lease, resource sale contract, right-of-way or other transaction affecting the parcel shall contain a clause that all revenue derived from the parcel shall be paid to the Secretary. The Secretary shall deposit all such revenue in the Acquisition Fund created pursuant to Title II Section 201 of this Act.

Title II - Acquisition Fund.

Section 201. Purposes.

The purposes of the acquisition fund shall be to:

(1) Establish specific auditable accounts to administer the funds used to implement the purposes of this act;

(2) Provide financial re-sources to the- Tribes or the Federal Government, or loans and grants to individuals, for the sole purpose of purchasing fractionated heirship interests to consolidate ownership.

(3) Reduce federal administrative expenses caused by the highly fractionated title on these specific tracts by reducing the number of owners and ownership shares.

(4) Eliminate Fractionated heirship as an ownership category of Indian Lands.

#### Section 202. Administration.

The Secretary is directed to establish an Acquisition Fund to disburse appropriations authorized to accomplish the purposes of this Act and to collect all revenues received from the lease, permit, or sale of resources from interests in trust allotments acquired by the Secretary pursuant to this Act. All proceeds from leases, permits or resource sales shall be deposited in interest bearing accounts. Provided that:

(1) The Secretary shall identify the specific funding needs at each allotted reservation and former reservation and allocate the funds appropriated into the Acquisition funds of each reservation in a manner proportionate to the needs of the that reservation.

(2) Where a Tribal Land Consolidation Plan includes any or all of the options listed in Sections 102, 103, 104, 105, and 106 of this Act, this Acquisition fund will be available to the Tribal Government to operate the requisite purchase, lending and grant programs. All loan repayments including principal and interest as well as proceeds from leases, permits or resource sales from interest acquired by the tribes shall be deposited to this account at that location.

(3) Insert section 218 of the present S. 1586

### Title III - Inheritance and Estate Planning

#### Section 301. Purposes.

The purposes of this title shall be to:

(1) Eliminate the current practice of passing Indian real property intestate to multiple heirs in undivided status.

(2) Eliminate, over time, the fractionated ownership of Indian heirship lands,

(3) Encourage and assist Indian landowners in all aspects of estate planning to reduce intestate succession.

(4) Provide for Tribal Governments to develop probate codes which shall supersede and replace use of state or local codes at that location

(5) In the absence of a Tribally adopted probate code provide a federal Indian probate code which shall supersede and replace state or local codes and provide uniformity throughout the country on distribution of Indian real property through probate.

#### Section 302. Estate Planning.

The Secretary shall implement estate planning programs at appropriate levels within the structure of the BIA to inform, advise and assist Individual Indian landowners in understanding and using the various methods and documents to secure for themselves their rights to devise, through will or otherwise, their lands to those heirs whom they chose; Provided, that-

(1) It shall be the purpose of this program to dramatically increase the use of wills, revokable family trusts, and other methods of devise among Indian Landowners.

(2) The desired effect of this program is to substantially reduce the quantity and complexity of Indian estates which pass intestate through the probate process while protecting the rights and interests of the Indian landowners.

(3) The Secretary is authorized to contract with, retain, hire or otherwise acquire the necessary expertise to provide this service at the local level to individual Indian Landowners.

(4) The Secretary shall prepare a report to Congress on the implementation and activities of this program on the first year anniversary of passage of this act, and every year thereafter.

#### Section 303. Tribal Inheritance Codes.

Notwithstanding any other provision of law, any Indian tribe may adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation or otherwise subject to that tribes jurisdiction. Such codes may provide, among other things, that non member Indians may be entitled to receive by devise or descent interests in trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction; for the creation of life estates for spouses or children who are not qualified to receive property by devise or descent; and for the renunciation of a devise by an ineligible person in favor of an eligible person.

#### Section 304. Federal Indian Inheritance Code.

Unless the Tribal government adopts and implements a Tribal inheritance code as defined in section 303 of this act and which will eliminate future fractionation of ownership in a reasonable period of time the following federal probate code shall be supersede and supplant all state or local codes for all Indians and Indian property under the jurisdiction of the Secretary.

(1) Descent or distribution<sup>3</sup>: Full or Undivided interest's shall descend by intestacy or devise. Provided, that;

(a) Fractional interest: Nothing in this section shall prohibit the devise of a fractional interest to any other eligible owner of trust or restricted land.

(b) As to decedents who die two years from the date of enactment of these amendments or thereafter, interests in trust allotments may descend by testate or intestate succession only to members of the tribe on whose reservation the trust allotment is located or which has jurisdiction over the trust allotment.

(i) For those estates passing by intestate succession, only spouses and heirs of the first degree (parents and children) and second degree (grandchildren, grandparents, brothers and sisters), who are not prohibited from taking by subsection (b) of this section, may inherit interests in trust allotments.

(ii) If a person who is prohibited by subsection (b) from acquiring an interest in a trust allotment is a surviving spouse and/or child of an intestate decedent and would have except for the provisions of subsection (b) received a devise of an interest in a trust allotment, a life estate shall at the request of the spouse during the probate of the decedent's estate be created for that spouse as defined in subsection (e) of this part, and the remainder shall vest in the Indians or tribal members who would have been heirs in the absence of a qualified person taking a life estate;

(iii) Any ineligible devisee shall have the right to renounce his or her devise in favor of an individual who is eligible to inherit.

(iv) If no individual is eligible to receive the interest in a trust allotment as provided in subsection (c), the interest shall revert to the tribe having jurisdiction over the trust allotment, subject to any life estate that may be created pursuant to paragraph (i) of this subsection.

(v) If an intestate Indian decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall revert to the tribe, subject to any non-Indian or non member spouse and/or children's rights as

described in paragraph (l) of this section;

(c) Except as provided in subsection (d), upon the death of an individual holding an interest in a trust allotment which is located outside the boundaries of a reservation and is not subject to the jurisdiction of any tribe, such interest shall descend by testate or intestate succession in trust to spouses and heirs of the first or second degree who are members of a tribe, and any residual will pass to the tribe in which the decedent was enrolled, subject to section (ii) and (iv) of this part.

(d) Upon the death of an Indian holding an interest in a trust allotment issued pursuant to the Acts of May 17, 1906, 34 Stat. 197, as amended, or May 25, 1926, 44 Stat. 629, as amended, such interests shall descend by testate or intestate succession in trust to Indian spouses and Indian heirs of the first or second degree, and in fee status to any other devisees or heirs."

(e) Life estates: The right to receive a life estate under the provisions of this section shall be limited to

(i) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest of 10 percent or more in the tract of land, or

(ii) a spouse and/or children who occupied the tract as a home at the time of the decedent's death.

(g). Full faith and credit to tribal actions under tribal ordinances limiting descent and distribution of trust or restricted or controlled lands. {§ 2202 [(208)]}: The Secretary in carrying out his responsibility shall give full faith and credit to any tribal actions taken pursuant to section 303 of this title, which provision shall apply only to estates of decedent's whose deaths occur on or after the effective date of tribal ordinances adopted pursuant to this chapter.

#### Title IV - General Provisions

Nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land or the creation of reservations for Indians with respect to any specific tribe, reservation, or state. {§ 2202 [(204)]}

Section 401. Conveyance Authority and Requirements. {§ 2208[(209)]}.

(l) The Secretary shall have the authority to issue deeds, patents, disclaimers or such other instruments of conveyance or transfer as may be needed to effectuate or perfect a sale, partition, exchange, or transfer of tribal lands and individual trust or restricted lands or interests

therein which are made pursuant to the terms of this Act or of Sections 372, 378, 379, 404 or 405 of Title 25 of the United States Code, provided, that for those lands that do not conform with an existing public land survey, land descriptions utilized in conveyancing documents authorized herein may be drawn by metes and bounds but must be accompanied by a survey plat which is capable of recordation in the jurisdiction in which the land is located.

(2) The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in compliance with the tribal land consolidation plan.

(3) The Secretary may execute instruments of conveyance for less than fair market value to effectuate the transfer of lands used as homesites held, on December 17, 1991, by the United States in trust for the Cherokee Nation of Oklahoma. Only the lands used as homesites, and described in the land consolidation plan of the Cherokee Nation of Oklahoma approved by the Secretary of February 6, 1987, shall be subject to this subsection.

#### Section 402. Trust Responsibility. {§ 2209 [(210)]}

Title to any land acquired under this chapter by any Indian, Indian Consortium or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe. Nothing in this Act shall be construed to diminish or expand the trust responsibility of the United States toward Indian trust lands. Nothing in this act shall be construed as authorizing the Secretary to hold lands in trust for entities which are ineligible to have lands held in trust for them.

#### Section 403. Tax exemption. {§ 2210 [(211)]}

All lands or interests in land acquired by the United States for an Indian or Indian tribe under authority of this chapter shall be exempt from Federal, State and County taxation.

#### Section 404. Authority of Tribal Government. {§ 2211 [(212)]}.

Nothing in this act shall be construed as vesting the governing body of an Indian tribe with any authority which is not authorized by the constitution and by-laws or other organizational document of such tribe.

#### Section 405. Secretarial Approval.

The Secretary shall, within 30-days after receipt of the Tribal action, approve such action unless the Secretary provides written notification detailing the reasons for disapproval. If the Secretary fails to approve or disapprove a tribal action within the stated

30-day time period, such tribal action shall be deemed approved.

Section 406. Establishing Fair Market Value 5. {§2215 (216)}.

(1) For the purposes of this Act, the Secretary shall develop a system for establishing the fair market value of various types of lands and improvements, which shall govern the amounts offered for the purchase of interests in trust allotments and for the establishment of value for the purpose of section 207; provided that the application of the values established hereunder may be challenged as follows -

(a) first, by demonstrating to the Secretary that a particular trust allotment or interest has a value materially different from the value established by the Secretary and if the matter is not resolved,

(b) by judicial challenge to the adequacy of, or conclusions reached by, the system of establishing values described above, or

(c) by judicial challenge to the value assigned to a particular trust allotment or interest therein.

(2) Exclusive jurisdiction over judicial challenges described in subsection (b) above is hereby vested in the United States District

Court

for the District of Columbia.

(3) Exclusive jurisdiction over judicial challenges described in subparagraph (c) above is hereby vested in the United States District Court for the District in which the particular trust allotment or interest is located."

Section 407. Compliance with the National Environmental Policy Act. {§ 2217 [~218)]}.

No sale of land, partition, exchange or other transaction affecting title accomplished pursuant to this act shall be deemed to be a major federal action for the purposes of the National Environmental Policy Act of 1969, as amended. (42 U.S.C. § 4321 et seq.).

Section 408. Notification.

Within 180 days of the enactment of these amendments, the Secretary shall notify tribes and individual owners of the provisions of these amendments. The notice shall list estate planning options available to owners under these amendments and other laws.

Section 409. Severability.

If any provision of this Act, or the application of any provision of this act to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this Act shall not be affected thereby.

Section 410. Authority for Appropriations.

There are authorized to be appropriated such sums as are necessary to carry-out the purposes of this Act."



## Overview and Section by Section Summary.

This contains the BIA work, restructured into formal bill format, with the addition of purchase options by the tribes and individual Indian people to solve fractionated heirship issues without deeding the land to the Department of the Interior or abridging Indian land ownership rights. It is a composite work, drawing from many different sources, and using existing tribal and individual recommendations for specific programs.

Specific sections of the Act are described below.

Section 1. Title: The title has been changed to reflect the purpose of the Act.

Section 2. Findings: has been edited and reduced, and includes basic tenants of current Indian policy.

Section 3. Purposes: has been changed to reflect trust responsibility and government to government relationships, and is plagiarized from previously passed Acts. Each separate title, (except Title IV) begins with an additional purpose section which defines the purposes/policies of that specific title.

Section 4. Definitions: has been edited to include specific definitions from previously passed acts to maintain uniformity in Indian Affairs. New items, such as "Indian landowner consortium" are included as required for the subsequent section of the Act.

### Title I- Land and ownership consolidation

Section 101- Purposes: a purpose section is added to give guidance on the reasons for the language in this title.

Section 102. Tribal Land Consolidation plans: Authorizes the Tribes to enact Tribal Land Consolidation Plans as called for in the original ILCA and expands their purpose to include resolving Fractionated Heirship issues. This version deletes the requirement for secretarial approval as redundant - additionally, secretarial approval is addressed in Section 405. Few if any Tribal Land Consolidation Plans have been approved by the Secretary since the passage of the ILCA, in part because no regulatory guidelines for approval have been developed. This removes that stumbling block to the process.

This section also relaxes guidelines on fair market value to facilitate the purposes of this Act, and requires the establishment of a new Trust fund account for each tribe to implement the Act - the fund is addressed in Section 202.

The section vesting authority to define Reservation boundaries in the Office of the Solicitor is deleted - it is both unnecessary and usurps existing authorities and legal recourse.

Section 103 Indian Landowner Consortiums: Provides a vehicle for landowners to consolidate their Fractionated heirship with other owners into a single ownership type, such as a holding company. The intent is to provide a vehicle for Individuals who inherit or own fractionated heirship to maintain ownership of that interest while still achieving the objectives of reducing federal requirements, and providing a non-federal decision making body over the land to exercise ownership prerogatives. This option may be most effective in maintaining family holdings which are fractionated among various family members who have no desire to dispose of their ancestral lands and joint inheritance.

This section also streamlines the administrative process for individual landowners to consolidate their holdings in a consortium.

Section 104. Tribal Purchase Option: this section is effectively identical to the similar section in prior drafts and removes the previous "stranger to the title limitations so that any willing seller can sell to the tribe without consent of his co-owners. It provides a first right of refusal to existing owners who are using the land, and further provides the tribe with a follow-up first right of refusal if that owner subsequently determines to sell the land.

Section 105 Individual Co-owner Acquisition Program: this section extends the purchase options to include purchase of fractionated interest by co-owners in the tract when authorized by the Tribal Land Consolidation Plan. It requires that in exercising this option the buyer must take some action, in the form of an undefined Estate Planning Document, to ensure that interests acquired in this part are not again fractionated through the devise and decent process. It follows the same rationale rights of refusal as the Tribal Purchase option in Section 104, and provides for the creation of a tribally operated Loan/Grant program to assist co-owners in exercising this option.

Section 106. Individual Non-owner Acquisition Program: This section extends the purchase option afforded to co-owners in Section 105 to individuals who are currently not co-owners but who desire to establish a land base, or consolidate their holdings. The "stranger to the Title"

limitations previously imposed are not included in the Act, so that a willing seller can sell to a willing buyer without undue outside interference. The clauses on rights of refusal, etc. contained in sections 104 and 105 are repeated here.

Section 107. Federal Acquisition Program: This section includes the prior versions of the federal acquisition program, as a fall back position if the tribal government chooses not to implement its own Land Consolidation plan within five years of the passage of this Act.

## Title II - Acquisition Fund

This title includes the acquisition fund proposed in prior drafts, modified to include tribal participation.

Section 201. Purposes: the purposes described here are self explanatory.

Section 202. Administration: This section requires the Secretary to establish the revolving acquisition fund, and defines the basic parameters under which it will operate.

Paragraph 1 requires the secretary to identify the specific funding needs at each allotted reservation, and distribute the acquisition funds appropriated in a fair and equitable manner proportionate to the established need.

Paragraph 2 requires the Secretary to make these funds available to the tribal governments with Land Consolidation Plans.

### Title III Inheritance and Estate planning

Section 301. Purposes: The purposes in this section are self explanatory.

Section 302. Estate Planning: This section instructs the Secretary to implement a program to assist individual Indian landowners with estate planning using wills and other documents to eliminate intestate succession of land. It provides authority for the Secretary to contract for the necessary expertise, and requires a yearly report to Congress on Estate Planning activities.

Section 303. Tribal Inheritance Codes: This section again authorizes Tribes to adopt their own codes governing descent and distribution of Trust estates.

Section 304. Federal Inheritance Code: This section provides that unless a tribe has adopted an inheritance code, a federal code will be created to supersede all state or local codes used in Indian Inheritance. The desire is to have a single probate code for all parts of the country if the tribes do not pass a separate code. The section, as written, largely repeats prior drafts with the exception that the "escheat" clause that refers to interests of less than 2% is removed. The "escheat" requirements of the ILCA continue to be constitutionally questionable and remain source of expensive litigation and disparate application. Therefore an effort is made to address the passing of small fractionated interested through probate without following the "escheat" methods. We have added language on interests which cannot be inherited in trust under the proposed draft to "revert" to the tribe, both in the cases of true escheat (no heirs) and in the cases of no legal "trust" heirs, and have addressed off-reservation lands as reverting to the decedent's tribe rather than passing out of trust into fee simple status as in the original draft.

### Title IV - General Provisions

This title contains all the "housekeeping" comments needed for the over all Act. The first paragraph, which is not numbered in this draft, is a disclaimer stating that this law does not change the authorities of the Secretary to acquire lands for reservations.

Section 401. Conveyance Authority and Requirements: This section contains the authority for the Secretary to take action on conveyances and is from the Ada Deer draft. In paragraph 2 we eliminated the discretionary authority of the Secretary to disapprove tribal sales or exchanges if he determines it is not in the best interest of the tribe because its the

tribe's responsibility to make those decisions, not the Secretary.

Section 402. Trust Responsibility: This section is a disclaimer indicating that the Act does not modify the trust responsibility, nor authorize the Secretary to hold lands in Trust for entities not eligible to hold trust lands.

Section 403. Tax Exemption: This section indicates that lands acquired under this Act are exempt from Federal, State and County taxes. We changed this from the Ada Deer draft by inserting "County" in place of "local" because the prohibition against local taxation could be interpreted as preventing a tribe from instituting a property or other tax code under its jurisdiction, which is not the intent.

Section 404. Authority of Tribal Government: This section is a disclaimer that indicates that this Act does not supersede tribal constitutions or other governing documents.

Section 405. Secretarial Approval: This section establishes that if the Secretary fails to take negative action on a Tribal action made pursuant to this Act within 30 days, then that tribal action is approved. Basically, the Secretary needs take no action to approve tribal action, only to disapprove it.

Section 406. Establishing Fair Market Value: The phrase "Fair Market Value" is used through-out this Act and other acts pertaining to Indian land and is generally the result of separate, specific appraisals. Due to the potential bulk of transaction requests which may follow this Act, a simplified method of ensuring fair market value is authorized, and a method for reviewing these determinations if desired is established.

Section 407. Compliance with the National Environmental Policy Act: This section is to comply with the referenced Act.

Section 408. Notification: This section requires the Secretary to notify the tribes and individual landowners of their options under this Act within 180 days of passage.

Section 409. Severability: This section establishes that if any provision of this Act is found to inapplicable, it does not affect any of the rest of the Act.

Section 410. Appropriations: This section authorizes appropriations. No target figures are included in this Act, as separate Congressional Committees deal with authorizing legislation than with appropriations. By leaving the specific appropriations out of this Act it is unnecessary to include the appropriation committees in the debate until the Act is passed. It is anticipated that extensive work will be required with the appropriations committees to fund this undertaking one the authorization is approved.